REMARKS

The present application was filed on November 20, 2003 with claims 1-19.

In the final Office Action, the Examiner: (i) rejected claims 1-3, 5-10, 12 and 15-19 under 35 U.S.C. §102(a) as being unpatentable over U.S. Patent No. 6,526,392 to Dietrich et al. (hereinafter "Dietrich"); and (ii) rejected claims 4, 13 and 14 under 35 U.S.C. §103(a) as being unpatentable over Dietrich.

In this response, Applicants have amended independent claims 1, 17 and 18 and canceled independent claim 19 without prejudice.

While Applicants believe that the claims, in their form prior to the present amendment, were patentable over Dietrich, Applicants have nonetheless amended the independent claims solely in an effort to move the case through to allowance.

Amended claim 1 now recites a method of managing one or more computing resources, the method comprising the steps of: obtaining data associated with at least one potential demand for use of the one or more computing resources; generating a management model in accordance with at least a portion of the obtained data, wherein the management model is operative to determine an allocation of the one or more computing resources based on combinations of price levels and service levels that may be offered to one or more users of the one or more computing resources so as to attempt to satisfy at least one management goal, wherein the combinations are determined by computing a set of prices and a set of service levels to offer to the one or more users at each one of the prices in the set of prices, and wherein the set of prices and the set of service levels are derived from: (i) levels associated with the one or more computing resources; (ii) historical demand data; and (iii) predicted demand data; evaluating the satisfaction of the management goal for each combination associated with the management model; determining an optimal configuration of the one or more computing resources, in accordance with the management model, that maximizes the management goal, wherein the optimal configuration is determined by solving the management model using one of a linear programming solver and a nonlinear programming solver, and <u>controlling a usage load level of the one or more computing resources by modulating combinations of price levels and service levels offered to the one or more users of the one or more computing</u>

<u>resources</u> (added language underlined for emphasis). Support for the present amendments may be found through the specification including, for example, at page 6, lines 24-27. Similar amendments have been made to independent claims 17 and 18.

Regarding both the §102(a) and §103(a) rejections based on Dietrich, it is asserted that the reference fails to recite each and every limitation of the amended independent claims.

As the abstract explains, Dietrich discloses a computer implemented method pertinent to yield managed service contract pricing. The method comprises the steps of inputting first information comprising a baseline profiling services contracted to zero or more existing customers; inputting second information comprising a profile of the services to be contracted to one or more new customers; and analyzing second information in the context of first information for the purpose of determining a range of prices to be considered for the services to be contracted. Dietrich also refers to "a service network model or other costing method" at column 2, lines 57-60.

However, nowhere does Dietrich disclose <u>generating a management model</u> operative to determine an allocation of the one or more computing resources <u>based on combinations of price levels and service levels that may be offered to one or more users of the one or more computing resources</u>. That is, Dietrich never mentions or suggests computing any such price-service combination offerings, and generating a model there from.

Likewise, since Dietrich never mentions or even suggests computing any such price-service combination offerings, and generating a model there from, Dietrich also thus fails to disclose that any such combinations are determined by computing a set of prices and a set of service levels to offer to the one or more users at each one of the prices in the set of prices, and wherein the set of prices and the set of service levels are derived from: (i) levels associated with the one or more computing resources; (ii) historical demand data; and (iii) predicted demand data. The "first information" and the "second information" referred to in Dietrich are never used to form a combination, no less to compute a set of prices and a set of service levels to offer to the one or more users at each one of the prices in the set of prices, wherein the set of prices and the set of service levels are derived from: (i) levels associated with the one or more computing resources; (ii) historical demand data; and (iii) predicted demand data, as recited.

While the final Office Action refers to column 4, lines 27-40, of Dietrich in rejecting the claimed "combination" language, the only concept Dietrich refers to therein is anticipated service activity.

Furthermore, nowhere does Dietrich disclose controlling a usage load level of the one or more computing resources by modulating combinations of price levels and service levels offered to the one or more users of the one or more computing resources, as is now recited in the independent claims. In contrast, by controlling a usage load level of the one or more computing resources by modulating combinations of price levels and service levels offered to the one or more users of the one or more computing resources, a system of the claimed invention can incite users (e.g., customers) to shift their usage behavior through targeting pricing and service offering modulation.

For at least the above reasons, Applicants assert that independent claims 1, 17 and 18 are patentable over Dietrich.

Applicants also assert that dependent claims 2-10 and 12-16 are patentable over the reference not only for the reasons given above, but also because one or more of said dependent claims recite separately patentable subject matter in their own right.

By way of example only, claim 9 recites that the step of setting price levels and service levels to be offered to users is based on a maximum number of price-service-level combinations. Dietrich at column 4, line 66+ (as relied upon by the final Office Action) states that "[t]he fourth step is to determine the contract price range, considering the results from the third step which establishes the minimum of the range and any market data that is available which may contribute to an understanding of what the maximum should be." The "maximum" that Dietrich is referring to here is the maximum contract price, not a maximum number of price-service-level combinations as recited in claim 9.

By way of further example, claim 10 recites that the management model generating step further comprises evaluating a revenue value for each price-service-level combination. Dietrich at column 1, line 48+ (as relied upon by the final Office Action) states that "one can manage the overall net profitability . . . of the service organization's resources." Since Dietrich never computes

any price-service-level combinations, Dietrich thus never evaluates a net profitability for each of such price-service-level combinations.

Regarding the §103 rejection of dependent claim 4, the final Office Action relies solely on Dietrich and seems to rationalize that the claimed limitation of "representing the at least one potential demand as one of a demand curve and a discrete choice model" is nonfunctional descriptive material, and thus it would have been obvious to modify Dietrich to represent the at least one potential demand as one of a demand curve and a discrete choice model.

First, Applicants do not agree that the claimed limitation is nonfunctional descriptive material. As illustratively explained in the present specification at page 16, line 1, through page 17, line 9, a model of user preferences using demand curves or discrete choice models, e.g., logit choice probability functions, referred to as (P_k), is computed. This model is then used to algorithmically solve the overall problem model (see equation on page 17). Thus, the recited limitation is an express limitation that the demand be represented as one of a demand curve and a discrete choice model. That is, the demand curve and the discrete choice model is not simply some nonfunctional descriptive material such as printed matter as the final Office Action alleges, but rather a concrete element that is computed in order to represent the subject demand.

Second, the rationale employed by the final Office Action in rejecting claim 4 is improper. To sustain an assertion that a reference can be modified to attain a claim limitation, it must be shown by the Office Action that there is some motivation in the reference (or at least somewhere) to suggest such a modification. However, the logic of the present rejection seems to be that because the claim limitation is allegedly nonfunctional descriptive material, it would have been obvious to one skilled in the art to modify Dietrich to represent a potential demand as one of a demand curve and a discrete choice model. This is clearly not proper rationale for an obviousness rejection.

Regarding the §103 rejections of dependent claims 13 and 14, the final Office Action again relies solely on Dietrich and seems to rationalize that the claimed limitations of "a computing center" (claim 13) and "an electronic utility" (claim 14) are simply statements of intended use. While Applicants do not agree with the assertion, they have amended the claims to even more

clearly recite what the computing resources <u>are</u> rather than (as alleged) what they are <u>intended to be used for</u>.

Also, the rationale for the obviousness rejection is again improper. Similar to claim 3, the rationale for rejecting claims 13 and 14 seems to suggest that even though there is no motivation in Dietrich to modify itself to attain the claimed limitation, it would have been obvious to do so simply because the Office Action alleges that the claim limitation is merely an intended use. This is clearly not proper rationale for an obviousness rejection.

In view of the above, Applicants believe that claims 1-10 and 12-18 are in condition for allowance, and respectfully request withdrawal of the §102(a) and §103(a) rejections.

Respectfully submitted,

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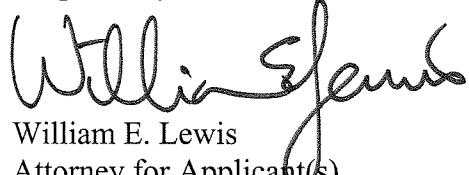
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